Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Supreme Court of the United States

OCTOBER TERM, 1960

No.

FERMIN FONSECA FLORES,
PETITIONER,
v.
ROBERT R. PRANN,
RESPONDENT;

JAIME FARDONK VAZQUEZ,
PETITIONER,
v.
THE PORTO RICO LIGHTERAGE CO.,
RESPONDENT;

ROBERTO GALINDO RAMOS,
PETITIONER,
v.
SAN JUAN DREDGING CORPORATION,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States

Come the petitioners by their counsel, Max Goldman, and respectfully petition this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit which affirmed the dismissal of the complaints filed by each of the petitioners in the United States District Court for the District of Puerto Rico, and in support of their petition do show:

1. The opinion of the United States Court of Appeals for the First Circuit is reported at 282 F.2d 153 *sub. nom. Flores et al.* v. *Prann* (see Appendix hereto, page 12); and the order denying rehearing was issued on November 15, 1960, but has not yet been published. The opinion of the United States District Court for the District of Puerto Rico is reported at 178 F. Supp. 845, *Flores* v. *Prann*.

2. The judgment of the Court below affirming the District Court's dismissal of the complaints is dated September 15, 1960. An extension of time was granted by the Court of Appeals to petition for rehearing enlarging the time to October 28, 1960. The petition for rehearing was filed within the time granted by the Court and denied on November 3, 1960. An extension of time to petition for certiorari was granted by this Honorable Court to February 10, 1961.

JURISDICTION

The jurisdiction of this Honorable Court to review by way of writ of certiorari is founded on the United States Code, Title 28, Sections 1254 (1) and 2101 (c) and Supreme Court Rules, Rule 19, Subsection 1 (b).

3. The questions presented for review arose as follows:

Three American seamen were injured aboard American flag vessels within the territorial waters of the Commonwealth of Puerto Rico, in the course of their employment with employers insured under the Workmen's Accident Compensation Act of Puerto Rico, which provides that compensation shall be the exclusive remedy of the employee as against his employer. Suits were instituted on behalf of each of these seamen against their respective employers in the United States District Court for the District of Puerto Rico based on the Jones Act, 46 U.S.C. 688, and these suits were dismissed, the dismissal having been affirmed by the judgment appealed.

The questions thus presented are:

a. Does the Jones Act, 46 U.S.C. 688, apply to seamen injured within the territorial waters of the Commonwealth of Puerto Rico?

This question comprises the subsidiary questions as to whether the power to legislate concerning the general admiralty and maritime law is exclusively reserved to the Federal government; whether the general admiralty and maritime law must be uniformly applied; and whether by the enactment of the Jones Act, *supra*, Congress has preempted the field.

b. Has the legislature of the Commonwealth of Puerto Rico been empowered to make the Jones Act, *supra*, inoperable in the territorial waters of the Commonwealth of Puerto Rico?

This question comprises the subsidiary questions as to the scope of the powers granted to Puerto Rico by the Organic Act of 1917, 39 Stat. 954 (1917), which was carried over intact by the Puerto Rico Federal Relations Act of 1950, 64 Stat. 319, particularly that section which is found in Title 48, United States Code, Section 749.

c. Does the Workmen's Accident Compensation Act, 11 L.P.R.A. c. 1, et. seq., as interpreted by the judgment on review effect a denial of the equal protection of the laws to Puerto Rican seamen, citizens of the United States?

4. The constitutional provisions involved are:

United States Constitution, Article 3, Section 2:

> "The judicial Power shall extend to all Cases, in Law and equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversia to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

United States Constitution, Amendment XIV, Section 1.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws."

The statutes involved are:

46 U.S.C., 1952 ed. § 688:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

48 U.S.C., 1952 ed., § 749:

"The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the

property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing in this chapter contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917."

Laws of Puerto Rico Annotated, Title 11, Section 21:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

5. The facts material to the consideration of the questions presented have been stated above. Jurisdiction in the United States District Court for the District of Puerto Rico, the court of first instance, was based upon 46 U.S.C., § 688.

Argument

1. This Case Raises Important Questions of Federal Law Which Have Not Been, but Should Be, Settled by This Court.

An important federal question is posed in that the Court of Appeals for the First Circuit has interpreted the Puerto Rican Federal Relations Act as bestowing upon the Commonwealth of Puerto Rico a degree of sovereignty greater than that enjoyed by the fifty federated states. The decision in effect grants to the Commonwealth of Puerto Rico power to adopt legislation concerning the navigable waters of the United States contrary to the general admiralty and maritime law.

Neither the Constitution of the United States nor the Puerto Rican Federal Relations Act defines the boundaries of sovereignty enjoyed by the Commonwealth of Puerto Rico. This Honorable Court has rendered no decision which clarifies the question.

Such a decision is necessary to clarify the law so that a host of associated questions will not require extended litigation for answer. If federal control over the navigable waters of Puerto Rico may be limited by contradictory legislation adopted by the Commonwealth of Puerto Rico, may not the Commonwealth of Puerto Rico:

(a) Apply the Puerto Rican Labor Law to wage disputes between shipowners and their crews in preference to the law as stated in Title 46 of the United States Code?

(b) Apply its standards of inspection and licensing to vessels and crews in preference to standards established by the federal government?

(c) Define and prosecute crimes which occur aboard vessels in Puerto Rican waters, disregarding the law as stated in Title 46 of the United States Code?

(d) Deny the right of Puerto Rican seamen to obtain treatment in a Marine Hospital?

(e) Establish its own shipping commissioner?

(f) Impose tonnage duties on American vessels?

(g) Adopt its own Rules of the Road for Puerto Rican waters?

(h) Nationalize vessels registered in Puerto Rico?

The Court of Appeals has stated:

"... Congress in the valid exercise of powers conferred upon it by the Constitution gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law...." 282 F.2d at page 157.

Petitioners respectfully contend that no such broad grant of power was conferred, and only a decision by this Court will settle the issue of the scope of power conferred.

2. THE COURT OF APPEALS FOR THE FIRST CIRCUIT HAS DECIDED A FEDERAL QUESTION IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

In *Panama R. Co. v. Johnson*, 264 U.S. 375, 44 S.Ct. 391, 68 L. Ed. 748, this Honorable Court held that the relative rights and obligations of seamen and their employers fall-

within the recognized sphere of maritime law and that Congress is invested with the power to legislate over these substantive provisions of the maritime law. This Court likewise held that the Jones Act, 46 U.S.C. § 688, was an integral part of that maritime law and stated:

> "The Statute (46 U.S.C.A. 688) extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform. The national legislation respecting injuries to railway employees engaged in interstate and foreign commerce which it adopts has a uniform operation, and neither is nor can be deflected therefrom by local statute, or local views of common-law rules. (Citations omitted). Of course, that legislation will have a like operation as part of this statute." (264 U.S. at page 396).

In its decision below the Court of Appeals violated the principle of uniformity adopted by this Court by recognizing that the decision created an area of lack of uniformity.

Other decisions of this Court imposing the requirement of uniformity in the general admiralty and maritime law are cited by the court below, but held inapplicable to Puerto Rico.

Southern Pacific Co. v. *Jensen*, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086.

Knickerbocker Ice Co. v. *Stewart*, 253 U.S. 149, 40 S. Ct. 438, 64 L. Ed. 834.

State of Washington v. *W. C. Dawson & Co.*, 264 U.S. 219, 44 S. Ct. 302, 68 L. Ed. 646.

The Court of Appeals explicitly recognizes that no state could exercise the power over navigable waters that it holds Puerto Rico enjoys.

3. The Court of Appeals Has Rendered a Decision in Conflict With Prior Decisions of the Same Court.

In *Guerrido* v. *Alcoa Steamship Co., Inc.*, 254 F.2d 349, the Court of Appeals for the First Circuit, after a thorough analysis of the applicable legislation, opinions and historical documents concluded that the navigable waters of Puerto Rico were to be regarded as navigable waters of the United States, subject to federal jurisdiction. In that case, the court also held that the maritime law of the United States was equally applicable to determine the rights and liabilities of private persons.

The instant case was distinguished from the prior holding in *Guerrido* on the theory that the Jones Act was rendered inapplicable to Puerto Rico by inconsistent Puerto Rican Legislation. Logically, the only way that the position of the Court of Appeals can be upheld is to conclude that when a seaman is injured on navigable waters, a court may apply the doctrine of local concern.

However, the very same court has held:

> "If plaintiff was a seaman injured on navigable waters, there is no place for the application of the doctrine of local concern." *Gahagan Const. Corporation* v. *Armao*, 165 F.2d 301, 305.

The decision in *Gahagan* is abundantly supported by decisions of other courts including several rendered by this Honorable Court.

See, e.g.

Employers' Liability Assurance Corporation v. *Cook*, 281 U.S. 233, 237, 50 S. Ct. 308, 74 L. Ed. 823;

Northern Coal & Dock Co. v. *Strand*, 278 U.S. 142, 147, 49 S. Ct. 88, 73 L. Ed. 232;

Kibadeaux v. *Standard Dredging Co.*, 81 F.2d 670, certiorari denied, 229 U.S. 549, 57 S. Ct. 12, 81 L. Ed. 404;

W. J. McCahan Sugar Refining & Molasses Co. v. *Stoffel*, 41 F.2d 651.

Moreover, the decision below is irreconcilable with *Gahagan*. Navigable waters of the United States are no less a subject of national concern in Puerto Rico than anywhere else. If the decision at bar is irreconcilable with *Gahagan* it is equally irreconcilable with *Guerrido*.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be granted, and that this Court should review and reverse the decision of the Court of Appeals.

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Appendix

United States Court of Appeals
For the First Circuit

No. 5605.

FERMIN FONSECA FLORES,

PLAINTIFF, APPELLANT,

v.

ROBERT R. PRANN,

DEFENDANT, APPELLEE;

No. 5606.

JAIME FARDONK VAZQUEZ,

PLAINTIFF, APPELLANT,

v.

THE PORTO RICO LIGHTERAGE CO.,

DEFENDANT, APPELLEE;

No. 5612.

ROBERTO GALINDO RAMOS,

PLAINTIFF, APPELLANT,

v.

SAN JUAN DREDGING CORPORATION,

DEFENDANT, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.

Before WOODBURY, *Chief Judge*, and HARTIGAN and ALDRICH, *Circuit Judges*.

Harvey B. Nachman, with whom *Stanley L. Feldstein* and *Golenbock & Nachman* were on brief, for appellants.

Walter L. Newsom, Jr., with whom *Enrique Cordova Diaz* and *Brown, Newsom & Cordova* were on brief, for Robert R. Prann, appellee.

Antonio M. Bird, with whom *Hartzell, Fernandez & Novas* was on brief, for The Porto Rico Lighterage Co., appellee.

Sarah Torres Peralta, with whom *Luis E. Garcia Benitez* was on brief, for San Juan Dredging Corporation, appellee.

OPINION OF THE COURT.

September 15, 1960.

WOODBURY, *Chief Judge*. These appeals present a common question. They were heard together and can be decided by one opinion.

The appellants were seamen and members of the crews of vessels[1] who were injured while at work on their respective vessels when afloat on navigable waters within the territorial limits of Puerto Rico. Their employers had insured their employees in accordance with, and hence were covered by, the Puerto Rico Workmen's Accident Compensation Act, Act No. 45, Laws of 1935, as amended, 11 L.P.R.A. 1 *et seq.*, and each appellant applied for and was awarded compensation under that Act. Following this each appellant brought suit in the court below against his employer to recover under the Jones Act for negligence and under the general maritime law for unseaworthiness. These appeals are from summary judgments dismissing each complaint on the ground that the plaintiffs' only remedy was that afforded by the local workmen's compensation act.[2]

In *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), the Court ruled that the Constitution of the United States conferred exclusive power upon the federal government

[1] At least, like the court below, we consider them to have been seamen and members of the crews of vessels although two of them worked on stationary dredges one of which was engaged in a highway construction project. See *Senko* v. *La Crosse Dredging Corp.*, 352 U.S. 370 (1957), *Grimes* v. *Raymond Concrete Pile Co.*, 356 U.S. 252 (1958).

[2] Section 21 of that act in material part provides:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; . . . ."

with respect to matters within the admiralty and maritime jurisdiction. Saying at page 215 that it must now be accepted as settled doctrine that ". . . Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country," the Court held that no State might validly apply its workmen's compensation law to maritime injuries occurring on its territorial waters. Congress then amended the "saving to suitors" clause to provide not only that suitors in all cases should have the right to a common-law remedy when the common law was competent to give it, but also to give ". . . to claimants the rights and remedies under the workmen's compensation law of any State." But the amendment was struck down as unconstitutional in *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 164 (1920), on the ground that the constitutional power of Congress to legislate concerning rights and liabilities within the maritime jurisdiction, and remedies for their enforcement, could not be delegated to the States, for the reason that "Congress cannot transfer its legislative power to the States—by nature this is non-delegable." Later Congress made a similar but more limited attempt but it met the same fate in *Washington* v. *W.C. Dawson & Co.*, 264 U.S. 219 (1924).

These decisions impose constitutional restrictions on the power of the States and on the power of Congress to delegate its legislative powers to the States. But, whatever the actual status of the Commonwealth of Puerto Rico may be in all its details, its present status is certainly not that of a State of the United States. Nor is it even that of a territory incorporated into the union preparatory to statehood. *Guerrido* v. *Alcoa Steamship Co., Inc.*, 234 F.2d 349, 352 (C.A. 1, 1956). As such the Government of Puerto Rico has such powers as Congress from time to time has seen fit to give it. And the broad power of Congress under Article IV § 3, ¶ 2 to legislate for national territory is

limited under the doctrine of the Insular Cases, so-called,[3] only by fundamental constitutional principles.

This court in *Lastra* v. *New York & Porto Rico S. S. Co.*, 2 F.2d 812, 813 (C.A. 1, 1924), and in *Guerrido* v. *Alcoa S. S. Co.*, supra, was not aware of any basic principle of the Constitution which prevented Congress from giving Puerto Rico jurisdiction over its own waters. Nor are we. Our problem, therefore, is not one of constitutional limitations. It is one of statutory interpretation. It is whether Congress in the exercise of its constitutional power under Article IV § 3, ¶ 2 to legislate for national territory has in fact seen fit to confer on the Government of Puerto Rico power to make its workmen's compensation law applicable to injuries sustained by employees while at work on its territorial waters.

This court in the *Lastra* case cited above definitely answered this questioned in the affirmative. The basis for the court's decision was that in 1917 by §§ 7, 8 and 37 of the Second Puerto Rico Organic Act, called the Jones Act, 39 Stat. 951, 954, 964, Congress conferred full power of control over local navigable waters upon the Government of Puerto Rico to the complete exclusion of the admiralty and maritime law of the United States. Later on in the *Guerrido* case we reaffirmed the result reached in *Lastra* but not on the broad basis on which this court rested its result, in that case, saying at page 352 that we had ". . . reached the conclusion that the broad proposition that the admiralty and maritime law of the United States is not in force to any extent in the navigable waters of Puerto Rico which we laid down in the *Lastra* case cannot be sustained." We rested this conclusion on a careful and

[3] *De Lima* v. *Bidwell*, 182 U.S. 1 (1901), and *Downes* v. *Bidwell*, 182 U.S. 244 (1901), and subsequent cases confirming and applying their doctrine, see cases cited in *People of Puerto Rico* v. *Tapia*, 245 U.S. 639 (1918).

thorough analysis of the applicable legislation, opinions and historical documents which need not be repeated here. It will suffice to say that as a result of our analysis we came to the conclusion ". . . that almost from the day of the Spanish cession of Puerto Rico to the United States it was recognized that the navigable waters of the island were to be regarded as navigable waters of the United States subject to the federal jurisdiction." We recognized that the statutes and opinions to which we referred to support this conclusion dealt primarily with the exercise of admiralty and maritime powers by the federal government in Puerto Rican waters. But at page 354 we said: ". . . we find nothing in them to suggest that the rules of the maritime law of the United States were not equally applicable in those waters to determine the rights and liabilities of private persons."

Nevertheless, in *Guerrido* we adhered to the conclusion reached in *Lastra* on the ground that §§ 7, 8 and 37 of the Second Organic Act of 1917, which were continued in force and form a part of the Puerto Rican Federal Relations Act,[4] gave the Legislature of Puerto Rico general legislative power over local waters. Therefore in the *Guerrido* case we came to the conclusion ". . . that the rules of the admiralty and maritime law of the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico to the extent that they are not locally inapplicable either because they were not designed to apply to Puerto Rican waters or because they have been rendered inapplicable to these waters by inconsistent Puerto Rican legislation." But we were very careful immediately to point out at page 355 that this was of course not to say ". . . that Puerto Rican legislation could thus supplant a rule of maritime law

[4] Law 600, 64 Stat. 319; 48 U.S.C. § 731, *et seq.*

which Congress in the exercise of its constitutional power has expressly made applicable to Puerto Rican waters."

It is certainly true that neither the Jones Act nor the general maritime law of unseaworthiness are inherently inapplicable in Puerto Rico. But on the other hand, there is nothing in the Jones Act specifically making its provisions applicable in the territorial waters of Puerto Rico and we are not aware that Congress has ever taken action to make the general maritime law of unseaworthiness apply in those waters. Instead in *Lastra* and *Guerrido* this court held and we agree that Congress in the valid exercise of powers conferred upon it by the Constitution gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law, and that the Legislature of Puerto Rico had exercised its power in its Workmen's Accident Compensation Act. Of course if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so.

We recognize that this holding creates an area of lack of uniformity in the maritime law. But it is clearly recognized in the *Jensen* case, *supra*, that absolute uniformity in things maritime is not a constitutional requirement nor is it even essential to the proper harmony of the maritime law in its interstate and international relations. For instances of lack of uniformity in the law of admiralty as applied in this country see the dissenting opinion of Mr. Justice Holmes in the *Jensen* case and the dissenting opinion of Mr. Justice Brandeis in the *Knickerbocker Ice Co.* case. If uniformity is desirable, it can be readily achieved by Congress. Until it specifically does so, we infer as this court did in the *Lastra* and *Guerrido* cases that in the sections of the Second Organic Act referred

to above Congress intended to clothe the Government of Puerto Rico with power to provide for the application of its workmen's compensation act to injuries suffered by employees on local navigable waters. And this inference is supported by the practically contemporaneous amendments of the "saving to suitors" clause held unconstitutional in the *Knickerbocker Ice Co.* and *Washington* cases, *supra*, for those amendments indicate that it was then the mood of Congress to permit application of local law to injuries suffered by employees on local navigable waters. If the mood of Congress has changed, means for expressing the change are readily at hand.

Judgments will be entered affirming the judgments of the District Court.

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Supreme Court of the United States

OCTOBER TERM 1[illegible]

No. 7[illegible]

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Supreme Court of the United States

OCTOBER TERM, 1960

No 709

ROBERTO GALINDO RAMOS,

Petitioner,

v.

SAN JUAN DREDGING CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Pursuant to the Rules of this Court, Respondent, the San Juan Dredging Corporation, respectfully submits the within brief in opposition to the Petition for Writ of Certiorari.

Statement of the Case

This suit was commenced on December 15, 1959 by the Petitioner, Roberto Galindo Ramos, plaintiff-appellant below, by filing a complaint in the United States District Court for the District of Puerto Rico. Petitioner sought relief under the general maritime law and the Jones Act of 1920, alleging that he had suffered an accident caused solely by the negligence of the Respondent.

Thereafter, the Respondent corporation filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the ground that there was no genuine issue as to any material

fact and that therefore Respondent was entitled to a judgment as a matter of law. Respondent's position was that the accident referred to in the complaint was covered by the Workmen's Accident Compensation Act of the Commonwealth of Puerto Rico, under which the Petitioner had been duly compensated. Respondent concluded that the compensation provided by the statute was the sole and exclusive remedy against the employer; that having received the benefits provided by said statute, the Petitioner was barred from instituting another action against the same insured employer for the same accident.

The District Court held that the Respondent was entitled to summary judgment as a matter of law and ordered that the complaint be dismissed. The opinion of the District Court is at 178 F. Supp. 845, *Flores* v. *Prann*.

On appeal to the United States Court of Appeals for the First Circuit, said Court of Appeals affirmed the District Court's dismissal of the complaint, by judgment dated September 15, 1960. The opinion of the Court of Appeals is reported at 282 F.2d 153. An order denying a petition for rehearing was issued on November 15, 1960, but has not yet been published.

An extension of time to petition for certiorari was granted by the Supreme Court to February 10, 1961. The petition for certiorari was filed in the Supreme Court on February 9, 1961 and was received by Respondent by mail on February 11, 1961. Therefore, pursuant to Supreme Court Rules, Rule 24, the last day for the filing of this brief in opposition, unless extended as provided by Supreme Court Rules, Rule 34, is March 13, 1961.

Statement of Facts

Respondent, San Juan Dredging Corporation, is a corporation organized under the laws of the Commonwealth of Puerto Rico and operates a dredge. On May 10, 1959, the date material herein, Respondent was an employer insured with the State Insurance Fund of the Commonwealth of Puerto Rico, and Petitioner was an employee of Respondent. On said date, Petitioner, while working on said dredge in the North Expressway project, a highway project being performed by Respondent near the Condado Laguna, San Juan, Puerto Rico suffered the injuries which are the subject of the present suit in the course of his functions as Respondent's employee.

The accident was reported to the State Insurance Fund of the Commonwealth of Puerto Rico and in accordance with the Workmen's Accident Compensation Act of Puerto Rico, 11 L.P.R.A. Section 1, et seq., the Petitioner applied for and was awarded compensation.

Petitioner then commenced the within action in the United States District Court for the District of Puerto Rico to recover under the Jones Act, 46 U.S.C., 1952 Ed. Section 688, for negligence and under the general maritime law for unseaworthiness. The District Court dismissed Petitioner's complaint on the ground that his only remedy was that afforded by 11 L.P.R.A. Section 21, and the Court of Appeals for the First Circuit affirmed.

Question Presented

Whether, in view of the clearly expressed intent of Congress to confer on the Government of Puerto Rico power to make its workmen's compensation law applicable to injuries sustained by employees while at work in the harbor areas or upon the territorial waters of Puerto Rico, pursuant to Congress's paramount constitutional power to legislate respecting the national territories, there is presented sufficiently special and important reasons for the Supreme Court to grant the petition for a writ of certiorari?

Constitutional and Statutory Provisions Involved

United States Constitution, Article 4, Section 3, Clause 2:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Supreme Court Rules, Rule 19, Subdivision 1:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. . . ."

48 U.S.C., 1952 ed., Section 747:

> "All property which may have been acquired in Puerto Rico by the United States under the ces-

sion of Spain in the treaty of peace entered into on the 10th day of December, 1898, in any public bridges, road houses, water powers, highways, unnavigable streams and the beds thereof, subterranean waters, mines or minerals under the surface of private lands, all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Puerto Rico, all the harbor shores, docks, slips, reclaimed lands, and all public lands and buildings not reserved by the United States for public purposes prior to March 2, 1917, is placed under the control of the government of Puerto Rico, to be administered for the benefit of the people of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable."

48 U.S.C., 1952 ed., Section 749:

"The harbor areas and navigable streams and bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the same limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation

of the interests of navigation and commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing in this chapter contained shall be construed so as to affect or impair in any manner the terms or conditions of any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by the Secretary of the Army or other authorized officer or agent of the United States prior to March 2, 1917."

11 Laws of Puerto Rico Annotated, 1955 Ed., Section 21:

"When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

ARGUMENT

1. Congress has clearly expressed its intention to confer upon the Government of Puerto Rico power to make the Puerto Rico Workmen's Compensation Law applicable to injuries sustained by employees while at work in the harbor areas or upon the territorial waters of Puerto Rico. Congress's intention has been expressed in such a clear fashion as to preclude any doubt as to the scope of the grant of power.

The Court of Appeals for the First Circuit stated in its opinion in this case (282 F.2d 153 at p. 156) that:

> "Our problem, therefore, is not one of constitutional limitations. It is one of statutory interpretation. It is whether Congress in the exercise of its constitutional power under Article IV, Section 3, Clause 2, to legislate for national territory has in fact seen fit to confer on the Government of Puerto Rico power to make its workmen's compensation law applicable to injuries sustained by employees while at work on its territorial waters."

The Court of Appeals answered the question posed, as it had done on two previous occasions [*Lastra* v. *New York & Porto Rico S.S. Co., Inc.*, 2 F.2d 812 (1924), appeal dismissed for lack of jurisdiction, 296 U.S. 536 (1925) and *Guerrido* v. *Alcoa Steamship Co., Inc.*, 234 F.2d 349 (1956)], vigorously in the affirmative, to wit, that Congress had, in unmistakable

terms, seen fit to confer such power upon the Government of Puerto Rico.

In expressing this purpose, Congress's language was broad and unequivocal. In 1917 the Organic Act of Puerto Rico was enacted, expressly providing in Section 8 thereof that:

> ". . . the harbor areas and navigable streams and bodies of water and submerged land underlying the same in and around the island of Puerto Rico and the adjacent islands and waters now owned by the United States and not reserved by the United States for public purposes be, and the same are hereby, *placed under the control of the Government of Puerto Rico*, to be administered in the same manner and subject to the same limitations as the property enumerated in the preceding section: Provided, That all laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interests of navigation and commerce, *except so far as the same may be locally inapplicable, shall apply to said island and waters* and to its adjacent islands and waters . . ." [39 Stat. 954 (1917), 48 U.S.C.A. Section 749 (1952); this section was literally reenacted in the Puerto Rican Federal Relations Act, Section 8, 64 Stat. 319 (1950), 48 U.S.C.A. Section 731e (1952)]. (Emphases supplied.)

In order to insure the reasonable use of such delegated power to the local government, Congress also provided in Section 7 of the Organic Act of 1917 that the public property which was therein being placed

under the control of the Government of Puerto Rico was:

> "to be administered for the benefit of the People of Puerto Rico; and the Legislature of Puerto Rico shall have authority, subject to the limitations imposed upon all its acts, *to legislate with respect to all such matters as it may deem advisable*". [39 Stat. 954 (1917), 48 U.S.C.A. Section 747 (1952); this section also was literally reenacted in the Puerto Rican Federal Relations Act, Section 7, 64 Stat. 319 (1950), 48 U.S.C.A. Section 731e (1952)]. (Emphasis supplied.)

Thus, Congress transferred certain public property, including the unnavigable and navigable waters, to the Government of Puerto Rico, placed that property under the plenary control of the Government of Puerto Rico, and specifically granted the local legislature the power to legislate in this area.

In 1950, in accordance with Public Law 600, 64 Stat. 314 (1950), 48 U.S.C.A. Section 731b (1952), the People of Puerto Rico was authorized to organize a government pursuant to a constitution of its own adoption. Said public law retained those provisions of the Organic Act of 1917 pertinent to the problem herein, continuing them in effect; with no modification, as the Puerto Rican Federal Relations Act. [64 Stat. 319 (1950), 48 U.S.C.A. Section 731e (1952)]. Therefore, under its Commonwealth status, by express provision Puerto Rico retained the same general power of legislation in the field of maritime law that it had under its territorial status.

Pursuant to this Congressional authority, the Puerto Rican legislature approved a Local Workmen's Accident Compensation Act in 1918 [Act No. 10 of February 25, 1918, Laws of Puerto Rico p. 54 (1918); this statute was succeeded by Acts passed in 1928 and 1935, the latter still in force as 11 L.P.R.A. Section 1, et seq.]. The present Workmen's Accident Compensation Act, provides an exclusive remedy in cases covered by the law, to the exclusion of any other judicial remedy (11 L.P.R.A. Section 21).

In *Lastra*, supra, the Court of Appeals for the First Circuit held in 1924 that the Puerto Rican Workmen's Accident Compensation Act passed in 1918 was applicable to maritime workers, to the exclusion of the provisions of the Jones Act of 1920, 46 U.S.C.A. Section 688 (1952). The Court's conclusion was based upon the pertinent provisions of the Organic Act of 1917 which, it was felt, were sufficient to provide the Legislature of Puerto Rico with general legislative powers concerning Puerto Rican waters. In 1956 the Court of Appeals for the First Circuit, in *Guerrido*, supra, after exhaustively reviewing the legislative history of the maritime law as applied to Puerto Rico, adhered to the conclusion in *Lastra* and held that (p. 355 of 234 F.2d):

> "we still think, as we indicated in the *Lastra* case, that Congress intended by section 8 of the Jones Act to give the Legislature of Puerto Rico full power to provide compensation for marine workers injured in Puerto Rican waters to the exclusion of the remedies against their employers provided by the American maritime law."

Confronted once again with the question of interpretation of the Congressional grant to the Legislature of Puerto Rico, the Court below stated (p. 156 of 282 F.2d):

> "in *Lastra* and *Guerrido* this court held and we agree that Congress in the valid exercise of powers conferred upon it by the Constitution gave the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and the general maritime law, and that the Legislature of Puerto Rico had exercised its power in its Workmen's Accident Compensation Act."

Both in *Guerrido* and in its opinion below, the Court of Appeals recognized that neither the Jones Act nor the general maritime law of unseaworthiness are inherently inapplicable in Puerto Rico, but that neither the Jones Act nor the general maritime law had been made specifically applicable in the territorial waters of Puerto Rico by Congress. Thus, the opinion below noted that (p. 157):

> "Of course if Congress sees fit it may supplant the local legislation as it applies to local navigable waters by making the Jones Act and the general maritime law of unseaworthiness specifically applicable in Puerto Rican waters, but it is not our function to do so."

Neither would it be proper for this Court to displace the clearly expressed intention of Congress.

This Congressional policy was reflected not only in the precise words of the Organic Act of 1917, the Puerto Rican Federal Relations Act, and the three successive interpretations of those statutes by the

Court of Appeals for the First Circuit, but also in Congressional legislation contemporaneous with the Organic Act of 1917 which indicates that it was then the Congressional mood to permit application of local law to injuries suffered by employees on local navigable waters.

In *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.ed. 1086, decided in May, 1917, this Court had held the New York Workmen's Compensation Act inapplicable to maritime laborers. Attempting to overcome the effect of *Jensen*, in October, 1917 Congress amended the Judicial Code to save to claimants rights and remedies under the workmen's compensation laws of any state. This amendment was struck down in *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 L.ed. 834 (1920) as an unconstitutional delegation of Congressional authority to the states. In 1922 a further attempt by Congress to permit application of workmen's compensation acts to certain classes of maritime employees was also held unconstitutional with reference to a state workmen's compensation statute in *State of Washington* v. *W. C. Dawson & Co.*, 244 U.S. 205, 37 S.Ct. 524, 61 L.ed. 1086 (1924).

The Organic Act of 1917 was passed in the same year in which Congress undertook to provide that compensation acts should, in the states, apply to such maritime laborers as those whose rights are now in question. As stated in *Lastra*, supra, (p. 815):

> "It is not reasonable to suppose that the same Congress intended to take away from Puerto Rico rights in the admiralty field which it sought

> to extend to the different states of the U.S. Emphasis is lent to this conclusion by the fact that in 1922 it indicated in the most explicit language its purpose to allow such acts full scope, not only in the states of the United States, but in any 'district, territory or possession of the United States.'"

Furthermore, it is a rule of statutory interpretation and construction that when a law is enacted, the legislature is held to be aware of pre-existing laws and therefore, if those laws are not amended or repealed, the presumption is that the legislature intended to maintain the status quo. *Great Northern R. Co.* v. *U.S.*, 315 U.S. 262, 62 S.Ct. 942, 86 L.ed. 836 (1942), *U.S.* v. *Elgin, J & E. Ry. Co.*, 298 U.S. 492, 500, 56 S.Ct. 841, 80 L.ed. 1300 (1936). The Jones Act of 1920 (41 Stat. 1007) was adopted more than three years after the Organic Act of 1917 and well after Puerto Rico, in 1918, in the exercise of the legislative powers granted it by Congress to legislate regarding all matters pertaining to harbor areas and bodies of water in and about the Island, had adopted a Workmen's Compensation Act providing for compensation as the exclusive remedy. It must be assumed that this 1918 Workmen's Compensation Act was reported to Congress as required by the Organic Act of 1917, Section 34 thereof [48 U.S.C.A. Section 826 (1952)]. Congress refrained from annulling that act under its reserved powers. Had Congress thought at the time of its approval of the Jones Act of 1920 that exertion of the power conferred upon Puerto Rico in 1917 had been obnoxious to some principle of uniformity, or contrary to the true purpose of the Congress, Congress could have extended

coverage of the Jones Act to Puerto Rico. Nothing of the sort was done.

In 1950 the Puerto Rican Federal Relations Act, was approved by Congress, literally reenacting the provisions of the Organic Act of 1917 relevant herein. As has been seen, between 1917 and 1950, judicial interpretations had been rendered whereby application of the local act to maritime workers had been recognized. [*Lastra and United Porto Rican Sugar Co.* v. *District Court*, 44 P.R.R. 904 (1933)]. Congress was aware of this legal situation. Had it sought to change the interpretation of its Organic Act of 1917, Congress would have expressly so provided in the 1950 Puerto Rican Federal Relations Act. Failure to make any such change compels the conclusion that the *Lastra* doctrine had full Congressional approval. See *Texas Construction Company* v. *United States*, 236 F.2d 138, 140 (C.A. 5, 1956), *Latimer* v. *U.S.*, 223 U.S. 501, 504, 56 L.ed. 526 (1912), *Hecht* v. *Malley*, 265 U.S. 144, 153, 68 L.ed. 949 (1924), *Bridges* v. *U.S.*, 346 U.S. 209, 221, 97 L. ed. 1557, 1568 (1953).

Petitioner has made the feeble contention that by enactment of the Jones Act of 1920, Congress preempted the field to the exclusion of local legislation. Whether Congress did preempt the field with the Jones Act of 1920 is purely a matter of Congressional intent. *People of Puerto Rico* v. *Shell Co.*, 302 U.S. 253, 58 S.Ct. 167, 82 L.ed. 235 (1937). The entire legislative and judicial history of the Organic Act of 1917, as outlined above, proves conclusively that Congress never intended the Jones Act of 1920 to be applicable to seamen injured while working in territorial waters in or around the Island of Puerto Rico.

Petitioner also contends that the opinion below destroys the uniform application of the general admiralty and maritime law. It is, of course, clear that absolute uniformity in maritime matters is not a *constitutional* requirement. See infra, pp. 18-19. Whether uniformity is desirable as a matter of *policy* is an issue for Congress to determine and it is perfectly obvious that Congress intended to clothe the Government of Puerto Rico with power to provide for the application of its Workmen's Accident Compensation Act to injuries suffered by employees on local navigable waters. See the dissent of Justice Holmes in *Jensen* and that of Justice Brandeis in *Knickerbocker*, for examples of the lack of uniformity in the law of admiralty even as applied in the continental United States.

Therefore, Petitioner's argument that Congress did not intend to give the Legislature of Puerto Rico power to enact legislation inconsistent with the Jones Act and general maritime law is patently repudiated by the legislative and judicial history of the Puerto Rican Federal Relations Act and thereby presents no issue befitting a full dress hearing by this Court.

2. The broad constitutional power of Congress to legislate for national territory and pursuant thereto to give Puerto Rico jurisdiction over its own waters is not limited by any basic constitutional principle.

The Court of Appeals below correctly construed the issue raised by this case as one of statutory interpretation rather than constitutional limitation.

Petitioner has, nevertheless, attempted to raise a constitutional issue by citing the *Jensen*, *Knickerbocker* and *Dawson* decisions as allegedly in conflict with the Court below.

Those three Supreme Court cases are, as the Court of Appeals recognized at p. 155 of its opinion, entirely distinguishable with respect to the issue posed here. Those

> "decisions impose constitutional restrictions on the power of the States and on the power of Congress to delegate its legislative powers to the *States*. But, whatever the actual status of the Commonwealth of Puerto Rico may be in all its details, its present status is certainly not that of a *State* of the United States. Nor is it even that of a territory incorporated into the union preparatory to statehood." (citing *Guerrido*) (emphasis supplied).

Puerto Rico is a possession of the United States, a territory of the national government that has not been incorporated into nor *made a part of the Union*. *Balzac* v. *Puerto Rico*, 258 U. S. 298, 66 Led. 627.

Granville-Smith v. *Granville-Smith*, 349 U.S. 1, 75 S.Ct. 553, 99 L.ed. 773, *Domenich* v. *The National City Bank*, 294 U.S. 199, 204, 55 S.Ct. 366, 369, 79 L. ed. 857.

As a result of its unique status, the provisions of the Constitution are not applicable *ex propio vigore* to Puerto Rico. *People* v. *Central Aguirre Associates*, 59 P.R.R. 403 (1941), *Downes* v. *Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.ed. 1088 (1901), *Dorr* v. *United States*, 195 U.S. 138, 49 L.ed. 128 (1903), *Rasmussen* v. *U.S.*, 197 U.S. 516, 49 L.ed. 862 (1905), *Wilcox* v. *Consolidated Gas Co.*, 212 U.S. 19, 53 L.ed. 382 (1908), *Dowell* v. *U.S.*, 221 U.S. 325, 55 L.ed. 753 (1910), *Ocampo* v. *U.S.*, 234 U.S. 91, 58 L.ed. 1231 (1913), *Balzac, People of Puerto Rico* v. *Shell Co.*, 302 U.S. 253, 82 L.ed. 235 (1937), *West India Oil Company (P.R.)* v. *Domenech*, 311 U.S. 20, 85 L.ed. 16 (1940), *Lastra*.

The broad and virtually absolute power of Congress, under Article IV, Section 3, Clause 2 of the Constitution, to legislate for national territories is limited under the doctrine of the Insular Cases [*De Lima* v. *Bidwell*, 182 U.S. 1, 21 S.Ct. 743, 45 L.ed. 1041, (1901), *Downes* v. *Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.ed. 1088 (1901) and subsequent cases confirming and applying their doctrine], only by fundamental constitutional principles and not by the host of constitutional provisions which narrow Congress's legislative authority in respect to States of the Union.

Neither in *Lastra, Guerrido* nor in its opinion below, was the Court of Appeals aware of any basic principle of the Constitution which prevented Congress

from giving Puerto Rico jurisdiction over its own waters. The exercise by Puerto Rico of legislative powers granted it by the Congress is the exercise of the same sovereignty as that exercised by Congress, not a different one. *People of Puerto Rico* v. *Shell Co.*, supra, at p. 264 (Thus, Congress has remained in complete control of Puerto Rican legislation, the Organic Act of 1917 (48 U.S.C.A. 826 (1952) providing:

> "All laws enacted by the Legislature of Puerto Rico shall be reported to the Congress of the United States as provided in section 842 of this title, which reserves the power and authority to annul the same. . . .").

As a result, *Jensen*, *Knickerbocker* and *Dawson* have absolutely no relevance here, inasmuch as they do not,

> "indicate a similar lack of power to act with respect to Puerto Rico. For what Congress could not constitutionally delegate to the legislature of a state as the organ of an independent sovereignty, it might well be able to delegate to the legislature which it had created for a territory which it had organized. (citing cases)." (*Guerrido* supra, at p. 356).

Not only is absolute uniformity in maritime matters not an unwavering policy, supra p. 15, it is also not a constitutional requirement. See opinion below supra, at p. 157. Thus, even with respect to States, Justice McReynolds writing for the majority in *Jensen* stated (p. 216):

> "In view of these constitutional provisions and

> the Federal act it would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. *That this may be done to some extent can not be denied* (giving examples)." (emphasis supplied)

See also dissents of Justice Holmes in *Jensen* and Justice Brandeis in *Knickerbocker*.

Even if uniformity in maritime matters was constitutionally imposed upon the States, and it was not, no such inhibition could be imposed upon Puerto Rico. Although, for example, a policy of uniformity exists with respect to interstate commerce, in *Sancho v. Bacardi Corporation of America*, 109 F.2d 57, rev'd on other grounds 311 U.S. 150, 61 S.Ct. 219, 85 L.ed. 98, it was admitted that Puerto Rico could pass valid legislation regulating foreign and interstate commerce under its Congressional grant of legislative power, even though a state could not properly do so. See also *Lastra* supra, at p. 814."

For Petitioner to prevail in his contention of the unconstitutionality of local regulation of maritime waters, this Court would have to reverse *Lastra*, *Guerrido* and the Court below, and declare the pertinent provisions of the Puerto Rican Federal Relations Act unconstitutional. Nothing in law warrants such an action.

3. There are no special and important reasons presented by the petitioner why the decision of the Court of Appeals should be reviewed by this Court.

A review on writ of certiorari is not a matter of right, and is granted only for special and important reasons. Supreme Court Rules, Rule 19. Petitioner has failed to carry his burden of showing the existence of the special bases for the exercise of jurisdiction by this Court.

Petitioner's argument that this case raises important questions of federal law is, as shown above, not borne out by the consistent legislative and judicial interpretation of the grant of power by Congress to the legislature of Puerto Rico (see Point I supra). Furthermore, the boundaries of sovereignty of Puerto Rico with reference to the application of the provisions of the United States Constitution has been sufficiently adumbrated by the case law (see Point II supra). The series of questions raised by Petitioner in Point "1" of his Argument are entirely moot and academic with reference to the precise issue raised by this case and are, therefore, not reviewable.

Petitioner's Point "2" alleges a conflict between the opinion below and several decisions of this Court. The Supreme Court decisions cited apply only to states of the Union and not to the distinct political entity of Puerto Rico (supra pp. 16, 18).

A similar attempt by Petitioner in his Point "3" to cite cases allegedly in opposition to the opinion of the Court of Appeals in this case must also fail. Every

case referred to in that section of Petitioner's argument refers to compensation acts promulgated by state legislatures, with the exception of *Guerrido*. Petitioner's attempt to read *Guerrido* as being irreconcilable with the decision at bar is abortive and will not withstand even a cursory perusal of *Guerrido*.

Petitioner's reference to the doctrine of "local concern" is in brief, misleading. *Guerrido* follows the general rule that in matters of "local concern"—and control of territorial waters in Puerto Rico falls within that term by express provisions of Section 7 of the Organic Act of 1917 and the Puerto Rican Federal Relations Act of 1950—only the plainly expressed will of the United States is to prevail as against the presumption of local control over matters of local concern. See *Lastra* supra, at p. 815, and *Inter-Island Steam Navigation Co.* v. *Terr. of Hawaii*, 305 U.S. 306, 83 L.ed. 189 (1938). Even states may make their local Workmen's Compensation Acts cover exclusively injuries received in the course of the work, thereby excluding the jurisdiction of admiralty law over the claim, wherever the work being performed at the time of the accident is a matter of mere local concern, and its regulation by the State would work no material prejudice to the characteristic features of the general maritime law. See *The Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469, 66 L.ed. 321 (1922), *Millers' Indemnity Underwriters* v. *Braud*, 270 U.S. 59, 70 L.ed. 470 (1926). In this case the Petitioner was working on a dredge in a highway project, a type of job of a typically local nature.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be denied.

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